

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE  
April 19, 2006 Session

**STATE OF TENNESSEE v. JENNIFER SILISKI**

**IN RE: APPLICATIONS OF ALAN SILISKI AND MARGIE LARGIN  
FOR RETURN OF ANIMALS**

**Appeal from the Circuit Court for Williamson County  
No. II-CR03192 R.E. Lee Davies, Judge**

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**No. M2004-02790-CCA-R3-CO - Filed July 10, 2006**

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The defendant, Jennifer Siliski, was convicted of nine counts of misdemeanor animal cruelty. Williamson County Animal Control took custody of over two hundred animals forfeited by the defendant as a result of her criminal charges and convictions. Third parties claiming ownership of some of the animals appeared before the trial court and asked for the return of their animals. The trial court held an informal hearing, swearing no witnesses, and put down an order regarding the third parties' claims to the forfeited animals. This appeal arises from third parties claiming that they were denied due process by the manner in which the trial court conducted the hearing regarding ownership of the animals and that the trial court erred in denying their property claims. We conclude the trial court did not have jurisdiction in the criminal case to dispose of the claims, and we reverse the judgment.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment Reversed**

JOSEPH M. TIPTON, J., delivered the opinion of the court, in which DAVID H. WELLES and JOHN EVERETT WILLIAMS JJ., joined.

Dan R. Alexander, Nashville, Tennessee, for the appellant, Margie Largin.  
Deana C. Hood, Franklin, Tennessee, for the appellant, Alan Siliski.

Paul G. Summers, Attorney General and Reporter; Mark A. Fulks, Assistant Attorney General; Ronald L. Davis, District Attorney General; and Derek Keith Smith and Braden H. Boucek, Assistant District Attorneys General, for the appellee, State of Tennessee.

**OPINION**

This case relates to the ownership of animals seized from the defendant after being charged with animal cruelty. The defendant was convicted of nine misdemeanor charges for failure to

provide food, water, shelter, or care to more than two hundred dogs in Case No. II-CR03192 in Williamson County. As a result of the animal cruelty charges, the Williamson County Sheriff's Department seized the dogs and placed them in the custody of Williamson County Animal Control. The trial court entered a judgment against the defendant on September 23, 2004.<sup>1</sup> The judgment provides that

3. During probation defendant will be subject to the following special conditions:

. . . .

(b) Any animal which was the subject of a conviction shall be forfeited to Williamson County Animal Control;

(c) Any animal which was the subject of a not guilty verdict or any uncharged animal seized by Williamson County shall be sold at public auction pursuant to a judicial sale . . . if there are any animals remaining, those animals will be forfeited to Animal Control;

. . . .

4. Any person who purchased a dog from defendant, but whose dog was seized by Williamson County, may request the Court for relief. The Court will require documentation identifying the dog and proof of purchase. This hearing will take place on October 5, 2004 at 9:00 a.m. All persons having custody of one of the dogs owned by Ms. Siliski shall bring that dog to the old BGA campus no later than the close of business October 13, 2004. Failure to comply with this order will result in contempt of court.

On October 8, 2004, the trial court entered an Amended Judgment Order which states that the trial court was amending the original judgment and that

the defendant forfeits her interest in all the animals seized to Williamson County, with the exception to those animals in section 5 below, to be disposed of at the County's discretion. Consequently, the public auction will not take place; second the County and State forfeit or waive their right to restitution from the defendant.

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<sup>1</sup>The "judgment" in the record is a written order by the trial court titled "Judgment" outlining the charges and sentences imposed. No judgment form has been included in the record.

On October 5, 2004, the trial court held an informal hearing for anyone claiming ownership of one of the animals seized pursuant to Case No. II-CR03192. Each person claiming ownership of an animal or the attorneys representing the alleged owners were allowed to address the court and provide documents showing proof of ownership of the animals. They were not allowed to call or cross-examine any witnesses and were not placed under oath.

Alan Siliski and Margie Largin appeared at the informal hearing and claimed ownership of several dogs and a cat. On October 8, 2004, the trial court denied Margie Largin's claim to seven dogs and Mr. Siliski's claim to six dogs and one cat. In denying Margie Largin's claim, the trial court found that she did not have standing to claim the five dogs belonging to her adult daughter and that the documentation for the two "Yorkies" was questionable. In denying Mr. Siliski's claim, the trial court found that Mr. Siliski was the ex-husband of the defendant, that he lived with the defendant, that he testified on the defendant's behalf at the trial, and that his claims were not valid because he was "too intertwined" with the defendant. Mr. Siliski and Margie Largin appealed from the trial court's order denying them the return of their pets.

Alan Siliski also filed a "Complaint for Recovery of Personal Property" against the Williamson County Animal Control Shelter in the Williamson County Circuit Court on August 26, 2004. Williamson County filed an "Answer to Complaint" on September 15, 2004. In its answer, Williamson County responded that the control of the animals was within the purview of the "Criminal Court in the pending case of State v. Siliski, Case #II-CR03192." The record contains no other information relating to the civil case, Case No. 04529. Circuit Court Judge R.E. Lee Davies presided over both the criminal case and the civil case.

Mr. Siliski appealed to the Tennessee Court of Appeals under the civil case caption Alan Siliski v. Williamson County Animal Control Shelter but used the criminal case number II-CR03192. The court of appeals concluded that the order from which Mr. Siliski was appealing arose out of the criminal case; thus, it did not have jurisdiction over the appeal. Alan Siliski v. Williamson Co. Animal Control Shelter, No. M2004-02790-COA-R3-CV, Williamson County (Tenn. Ct. App. Dec. 8, 2004). The court of appeals also concluded that an appeal from Case No. 04529, which was a civil matter, would lie with the court of appeals. However, because no final order was entered in Case No. 04529, the court of appeals dismissed the portion of the appeal relating to Case No. 04529 and transferred the portion of the appeal relating to Case No. II-CR03192 to this court.

Margie Largin contends that the trial court erred in denying her claim to her property and in denying her due process of law through a fair, impartial, and meaningful hearing. She asserts the trial court "took no testimony from anyone, swore no witnesses, [and] allowed no cross-examination." She contends her relationship with the defendant was a bailor/bailee relationship.

Mr. Siliski contends that the trial court denied him his procedural due process rights by the manner it conducted the hearing on October 5, 2004. He asserts the trial court denied his right to due process by denying his claim on the basis that he was the ex-husband of the defendant. He contends that being the ex-spouse of a defendant and testifying on her behalf does not color his title

or ownership to his personal property. He asserts the Tennessee Legislature has not provided the statutory procedure for claiming an ownership interest in animals that have been seized pursuant to the animal cruelty statute. He asserts his due process rights were violated because he was not given proper notice of the hearing and because animal control's response to each claim was presented to the trial court outside each alleged owners' presence.

The state contends the attorney general and reporter is not statutorily authorized to represent the interests of the Williamson County government in this matter. The state argues that third parties cannot perfect an appeal from a judgment of conviction in a criminal case. The state contends the appellants have no standing to appeal from the judgment of conviction in this criminal case and have no right to appeal under the rules of appellate procedure. The state asserts it is unaware of any authority authorizing the trial court to conduct these proceedings in the middle of a criminal prosecution. The state contends the appropriate remedy would have been for the third parties to pursue a replevin action against the constructive bailee.

We believe the key issue is whether the trial court in the criminal case had jurisdiction to determine third party claims for animals seized from and forfeited by the defendant. Williamson County Animal Control took custody of the animals forfeited by the defendant pursuant to Tennessee Code Annotated sections 39-14-202(d) and 39-14-210(e), (f). Tennessee Code Annotated section 39-14-202(d) provides that

In addition to the penalty imposed in subsection (f), the court making the sentencing determination for a person convicted under this section shall order the person convicted to surrender custody and forfeit the animal or animals whose treatment was the basis of the conviction. Custody shall be given to a humane society incorporated under the laws of this state. The court may prohibit the person convicted from having custody of other animals for any period of time the court determines to be reasonable, or impose any other reasonable restrictions on the person's custody of animals as necessary for the protection of the animals.

Tennessee Code Annotated section 39-14-210 provides in pertinent part that

(e) Any humane society chartered by the state, into whose custody shall lawfully come any animal, shall have a lien on that animal for the reasonable value of the goods and services necessarily rendered by, or at the instance of, the society to that animal.

(f) Custody of any animal victimized under this part shall be placed with any humane society chartered by the state immediately upon arrest of the person alleged to have violated this part. The humane society shall assist the animal and preserve evidence for prosecution.

The animal cruelty statutes provide that custody shall be given to a humane society. The statute does not give the trial court the authority to determine ownership or the discretion to place the animals with anyone other than a humane society chartered with the state.

The animal cruelty statutes do not set out the procedure to be followed by a third party claiming ownership of a forfeited animal. However, Part 7 of the General Provisions of Chapter 11 in Title 39 provides for the disposition of forfeited property. It outlines the procedure for the judicial forfeiture of “[a]ny property, real or personal, directly or indirectly acquired by or received in violation of any statute or as an inducement to violate any statute, or any property traceable to the proceeds from such violation.” T.C.A. § 39-11-703(a). We recognize that animals forfeited under the animal cruelty statutes are not property acquired or received as a result of the offense, but absent any forfeiture procedures within Part 2 on Animals, we look to the general provisions of this title for the proper procedure. See T.C.A. §§ 39-11-701 to -717, 39-14-201 to -212; see also Frye v. Memphis State Univ., 671 S.W.2d 467, 469 n.1 (Tenn. 1984) (noting that when there were no specific statutes to govern the proceedings, “[i]t was under those circumstances that the general procedural statutes were deemed applicable”).

Tennessee Code Annotated section 39-11-705(b) addresses jurisdiction over the disposition of forfeited property.

Jurisdiction in a criminal forfeiture action under this chapter extends to the circuit and criminal courts of this state, and general sessions courts for personal property where the value of personal property subject to forfeiture does not exceed the jurisdictional limits of the court and the state and defendant consent to the exercise of jurisdiction by the general sessions court. Jurisdiction over the interests of a third party who is not a defendant in the criminal prosecution must be exercised in a separate civil forfeiture action.

(Emphasis added.) Additionally, Tennessee Code Annotated section 39-11-708(d) addresses the procedure for judicial forfeiture. It states in pertinent part that

If real or personal property of a criminal defendant is to be forfeited as part of a criminal prosecution, the indictment or information must contain notice in a separate count that the state will seek forfeiture of property under the provisions of this chapter and all property subject to forfeiture must be generally described within the separate count. . . . If a third party who is not a defendant in the criminal action has an interest in any of the property described in the criminal forfeiture count of the indictment or information, then the state shall determine the rights of the third party in a separate civil forfeiture action under this chapter.

(Emphasis added.)

In Lawrence v. Mullins, the supreme court addressed a dispute between a defendant and third parties over money that was illegally seized from the defendant. 449 S.W.2d 224 (Tenn. 1969). The criminal division of the circuit court found the defendant was the subject of an unlawful search, suppressed the evidence against him, and temporarily reserved its opinion on the return of the money seized. The third parties filed a claim in the law division of the circuit court claiming the money seized from the defendant was money that had been stolen from them. The supreme court determined that the statutes allowing a trial court to return property subject to unlawful seizure were not applicable to actions in the nature of replevin, “the purpose of which is to establish title to or right to possession of property.” Id. at 227. The supreme court also determined that if there is a controversy over who has a right to stolen property, “a question is presented which cannot be determined on a criminal process, but must be determined in a civil action.” Id. at 228. The supreme court noted that its decision in Lawrence was not intended to affect the practice of the courts returning property in possession of the courts to a defendant in a criminal case if he is the undisputed owner or in turning over stolen property to a rightful owner if there are no conflicting claims to ownership. Id. at 229. Although this case does not involve stolen property, we believe it involves a dispute of ownership and cannot be determined in the criminal process.

We conclude the trial court did not have jurisdiction in the criminal case to determine third party ownership over the animals that had been placed with the Williamson County Animal Control as a result of the criminal cases against Jennifer Siliski. We acknowledge that Mr. Siliski filed a complaint against the Williamson County Animal Control in the Circuit Court of Williamson County and that Judge Davies presided over both the civil and criminal cases at issue. However, the order entered by the trial court from which this appeal arose was in the criminal case. The remedy sought by the third parties is not one that can be pursued in the criminal case against Jennifer Siliski but one to be pursued in a separate civil action.

## CONCLUSION

Based on the foregoing and the record as a whole, we reverse the judgment of the trial court.

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JOSEPH M. TIPTON, JUDGE